

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
WORCESTER DIVISION
CIVIL ACTION NO.

02-2218 f7

THOMAS MULHERN

Plaintiff, Individually And On Behalf
Of A Class Of All Persons and Entities
Similarly Situated

V.

JOHN G. MACLEOD D/B/A ABC
MORTGAGE COMPANY,
DefendantCOMPLAINT - CLASS ACTION**RECEIVED**

OCT 16 2002

CLERK OF COURTS
WORCESTER COUNTY

Plaintiff, Thomas Mulhern, individually and on behalf of all persons and entities similarly situated, files this complaint against defendant John G. MacLeod d/b/a ABC Mortgage Company.

THE PARTIES

1. Thomas Mulhern at all times relevant to this Complaint was a resident of Shrewsbury, County of Worcester, Massachusetts ("Mr. Mulhern" or "Plaintiff").
2. John MacLeod, d/b/a ABC Mortgage Company ("ABC Mortgage") has a principal place of business in Braintree, County of Norfolk, Massachusetts.
3. At all relevant times, ABC Mortgage transacted business in the Commonwealth, solicited business in the Commonwealth, engaged in a persistent course of conduct in the Commonwealth, or has derived substantial revenue from services rendered in the Commonwealth.

THE LEGAL BASIS OF THE CLASS CLAIMS

4. This class action arises from the repeated violation by ABC Mortgage of federal law prohibiting privacy violations via invasive telemarketing practices.

5. The claims of Mr. Mulhern and the class of persons represented by Mr. Mulhern arise pursuant to the provisions of the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA"), a federal statute enacted by Congress in 1991 prohibiting unreasonable invasions of privacy via certain telemarketing practices.

6. One of the express provisions of the TCPA prohibits the use of a facsimile machine to send unsolicited advertisements for goods and services.

7. The TCPA, 42 U.S.C. §227(b)(3) further provides a private right of action in state court, as follows:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State, (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each violation, whichever is greater, or (C) both such actions.

8. The federal regulations implementing the TCPA similarly provide that no person may "[u]se a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine." 47 C.F.R. §64.1200(a)(3).

9. Mr. Mulhern brings this action individually and as the representative of all members of a class pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure.

FACTUAL ALLEGATIONS AS TO THE REPRESENTATIVE PLAINTIFF

10. On December 26, 2000, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab A.

11. On January 8, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab B.

12. On January 23, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab C.

13. On January 25, 2001, Mr. Mulhern wrote to ABC Mortgage and informed it that its repeated conduct in transmitting to him unsolicited facsimile advertisements constituted violations of both the TCPA and the Massachusetts Consumer Protection Act, G.L. c. 93A. A copy of Mr. Mulhern's demand letter and proof of receipt (January 30, 2001) is attached at Tab D.

14. ABC Mortgage failed to respond to Mr. Mulhern's demand and failed to stop transmitting unsolicited facsimile advertisements to Mr. Mulhern.

15. On February 5, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab E.

16. On February 15, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab F.

17. On March 29, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab G.

18. On April 30, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab H.

19. On May 22, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab I.

20. On June 13, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab J.

21. On September 27, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab K.

22. On November 9, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab L.

23. On December 4, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab M.

24. On December 17, 2001, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab N.

25. On January 7, 2002, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab O.

26. On January 28, 2002, ABC Mortgage transmitted an unsolicited facsimile advertisement to Mr. Mulhern. A copy of the fax is attached at Tab P.

27. ABC Mortgage did not obtain the consent of Mr. Mulhern prior to transmitting any facsimile advertisements to his home.

28. Upon information and belief, over the past several years, ABC Mortgage has engaged in widespread advertising via unsolicited facsimile transmission in violation of the TCPA.

29. Upon information and belief, over the past several years, ABC Mortgage has transmitted unsolicited facsimile advertisements to thousands of residents of the Commonwealth of Massachusetts.

30. Upon information and belief, ABC does not obtain the consent of facsimile recipients prior to the transmission of facsimile advertisements.

CLASS ALLEGATIONS

31. The Plaintiff brings this action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure on behalf of a class of all other persons or entities similarly situated.

32. The class of persons represented by Mr. Mulhern is composed of all persons or entities within Massachusetts to whom ABC Mortgage sent, or caused to be sent, one or more unsolicited facsimile advertisements promoting ABC Mortgage and its services, sent on or after October 17, 1998.

33. Excluded from the Plaintiff Class are the defendant, its employees, any judge or justice assigned to hear any aspect of this litigation, any spouse or relative of such judge or justice within the third degree of relationship, or the spouse of any such person.

34. The class as defined above is identifiable by phone records, fax transmittal records and fax number database. On information and belief, the potential class members number in the thousands and constitute a class so numerous that joinder of all class members is impracticable. Mr. Mulhern is a member of the class.

35. There are questions of law and fact common to Mr. Mulhern and to the proposed class, including but not limited to the following:

- a. Whether ABC Mortgage violated the TCPA, FCC promulgating regulations, by engaging in unsolicited fax advertising.
- b. Whether the facsimiles sent by ABC Mortgage to class members constitute unsolicited advertisements;
- c. Whether the Plaintiff and the members of the class are entitled to statutory damages as a result of ABC Mortgage's actions.

36. Mr. Mulhern's claims are typical of the claims of the class.

37. Mr. Mulhern is an adequate representative of the class because his interests do not conflict with the interests of the class, he will fairly and adequately protect the interests of the class, and he is represented by counsel skilled and experienced in class actions.

38. The actions of ABC Mortgage are generally applicable to the class as a whole and to Mr. Mulhern.

39. Common questions of law and fact predominate over questions affecting only individual members of the class and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by ABC Mortgage and/or its agents.

40. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

41. Mr. Mulhern is unaware of any litigation concerning this controversy already commenced by others who meet the criteria for class membership described above. Mr. Mulhern is capable of and is willing to represent the other members of the class.

**COUNT 1: VIOLATION OF THE TCPA
SENDING UNSOLICITED FAX ADVERTISEMENTS**

42. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

43. ABC Mortgage, or its agents, negligently caused facsimile advertisements to be sent to Mr. Mulhern's telephone facsimile machine, and to the facsimile machines of other members of the class, in violation of the TCPA and the FCC's promulgating regulations.

44. The TCPA provides for statutory damages in the amount of a minimum of \$500 for each violation of the TCPA.

**COUNT II: INJUNCTIVE RELIEF
TO BAR FUTURE TCPA VIOLATIONS**

45. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

46. The TCPA expressly authorizes injunctive relief to prevent further violations of Telephone Consumer Protection Act.

47. The Plaintiff, acting on behalf of the Class, respectfully petitions this Court to order ABC Mortgage to immediately cease engaging in unsolicited facsimile advertising in violation of the TCPA.

**COUNT III: INJUNCTIVE RELIEF
PRESERVATION OF EVIDENCE**

48. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

49. ABC Mortgage, or its agents, has custody and control of the business records and other information necessary to identify the members of the class including names and telephone facsimile numbers. Unless immediate injunctive relief is ordered, it is feared that ABC Mortgage, or its agents, will alter, erase, delete, destroy or otherwise dispose of the records in their possession which are necessary to identify each recipient of the unsolicited facsimile advertisements being sent by defendants. For this reason, the Plaintiff petitions the Court for an order enjoining ABC Mortgage, its agents, or anyone acting on its behalf, from altering, deleting or destroying any documents or records which could be used to identify the members of the class.

PRAYER FOR RELIEF

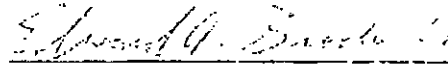
WHEREFORE, on behalf of himself and the other members of the class, the Plaintiff prays for the following relief:

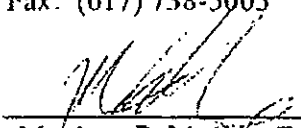
1. That ABC Mortgage immediately be restrained from engaging in future telemarketing in violation of the TCPA.
2. That ABC Mortgage, its agents, or anyone acting on its behalf, be immediately restrained from altering, deleting or destroying any documents or records which could be used to identify the members of the class.
3. That this Court certify the claims of the named plaintiff and all other persons similarly situated as class action claims as provided by Rule 23 of the Massachusetts Rules of Civil Procedure.
4. That the named plaintiff and the other members of the class action so certified be awarded statutory damages for each separate violation of the TCPA by ABC Mortgage.
5. That the Court enter an appropriate order enjoining ABC Mortgage, its agents, or anyone acting on its behalf, from altering, erasing, changing, deleting, destroying or otherwise disposing of any records, including computer disks or computer programs, in its possession or control which can be used to identify all persons, corporations, or other entities to whom defendants have transmitted unsolicited facsimile advertisements.
7. That the named plaintiff and the members of the class be granted such other and further relief as is just and equitable under the circumstances.

**THE CLASS PLAINTIFF REQUESTS A JURY TRIAL AS TO ALL CLAIMS OF THE
COMPLAINT SO TRIABLE**

THOMAS MULHERN

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100 Front Street
Worcester, MA 01608-1477
Phone: (508) 791-8500
Fax: (508) 791-8502

Date: October 11, 2002

A

PAY OFF YOUR DEBT...

NOW!

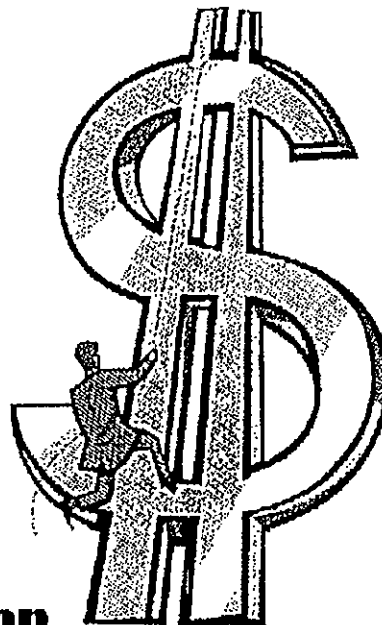
It's time to take advantage of the equity in your home!
DON'T DELAY Interest rates are going up!

- New Home Purchases
- Cash Out
- Debt Consolidation
- No Income Verification
- No Money Down
- No Closing Costs

Rates as Low as:

4.5% APR 7.94

Loan Amounts up to \$1.5 Million



We have Billions to lend. A to Z credit ratings accepted

**Credit problems? That's O.K.
We'll get you the money anyway.**

We have TWO offices conveniently located in Massachusetts to serve you!
No cost or obligation for the call or an application!!

Need Answer Now! Call Toll Free:

888-565-4761

or log on to our website @

www.ABCMtg.net

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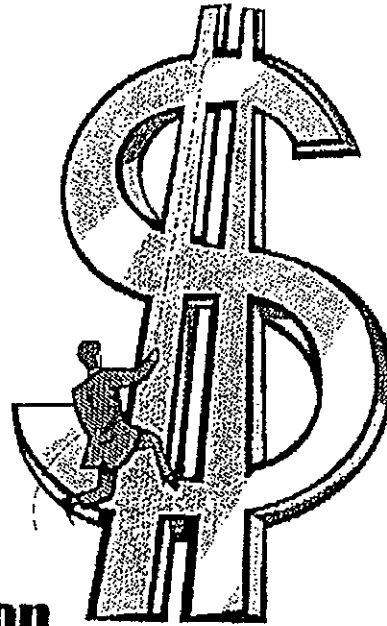
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PAM-6/30/2004 10:50:46 AM

D

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Thomas Mulhern
PO Box 242
Shrewsbury, MA
01545



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John G. Macleod
ABC Mortgage Co.
125 PLAIN STREET
BRAintree, MA

02184

2. Article Number (Copy from service label)

7000 0600 0025 8003 2931

PS Form 3811, July 1999

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

Bill Whitehouse

B. Date of Delivery

C. Signature

x Bill Whitehouse

☒ Agent

☐ Addressee

D. Is delivery address different from item 1? ☐ Yes

If YES, print delivery address below: ☐ No

JAN 30 2001

3. Service Type

☐ Certified Mail

☒ Express Mail

☐ Registered Mail

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

Domestic Return Receipt

112500 00-11 1700

Thomas Mulhern
PO Box 242
Shrewsbury, MA
01545

1/25/01

John G. Macleod
ABC Mortgage Co.
125 Plain Street
Braintree, MA 02184

Dear Mr. Macleod:

Under the provisions of the Telephone Consumer Protection Act of 1991(TCPA), United States Code, Title 47, Section 227, I hereby make written demand for relief as outlined in that statute.

On the following dates I received unsolicited faxes from you and/or your agent advertising your mortgage company, ABCmtg.net:

December 26, 2000
January 8, 2001
January 23, 2001

The TCPA (47 USC § 227) and its implementing FCC regulations (mainly 47 CFR § 64.1200) prohibits the transmission of any material advertising the commercial availability or quality of any product, service or property to any person without that person's prior express permission or request.

Under the TCPA, recipients of unsolicited fax advertisements, if otherwise permitted by the laws in their state, can file suit in state court to collect the greater of \$500 or actual damages for each fax, and/or obtain an injunction. If a court determines that the violations were willful or knowing, the damages can be tripled at the discretion of the court. The party ultimately responsible under the law is the party for which the solicitation is made.

This practice is declared illegal by 47 USC § 227, and I intend to file a lawsuit against you for each violation of the law. Under Massachusetts General Laws, CH93A, section 9, failure to make payment or tender reasonable offer or settlement within thirty (30) days thereof, may create additional liability for up to treble damages, cost and attorney's fees.

Therefore, I hereby demand the following relief: In return for a settlement of \$1500, I will agree not pursue legal action against you and consider the matter resolved. Your failure to do so could subject you to triple damages, attorney's fees and costs, as I will institute legal action.

Sincerely,

Thomas Mulhern
PO Box 242
Shrewsbury, MA
01545

PAM-6/30/2004 10:50:46 AM

E

PAY OFF YOUR DEBT...

NOW!

It's time to take advantage of the equity in your home!

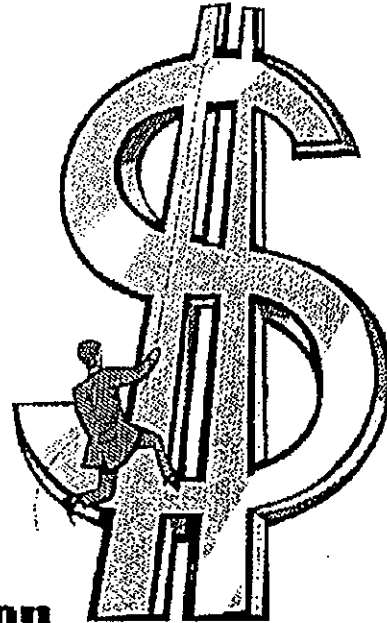
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Homeowners, if you are thinking about purchasing or refinancing,

Get Your Rate...

...Before It's TOO LATE!



ACT NOW! Mortgage rates are lower than they've been in years. *Who knows* how long they'll stay this low!

- Wholesale Pricing
- Never an application fee!
- No Income Verification Loans!
- Free Pre-Approvals! Free Savings Analysis!
- Night/Weekend appts. at your home or office.
- Fast, troublefree closings at your home or office.

Call today to find out if you can save hundreds of dollars per month! With rates this low, often times you can **'GET CASI'** and still lower your payment! **ABC Mortgage Co.** is one of the largest independent mortgage brokers in Massachusetts. We have billions to lend!

ABC Mortgage Co.
has 2 offices
conveniently
located in
Braintree, MA and
Brookfield, MA!

Call Today! MB#1507 & 1691



Call Toll-Free, Mon.-Thur. 9 a.m.-7 p.m. and Fri. 9 a.m.-5 p.m.

888-565-4760

or log on anytime to: **www.abcmntg.net**

If you received this fax in error and would like to have your number removed from our database, call toll-free at 800-443-5716.

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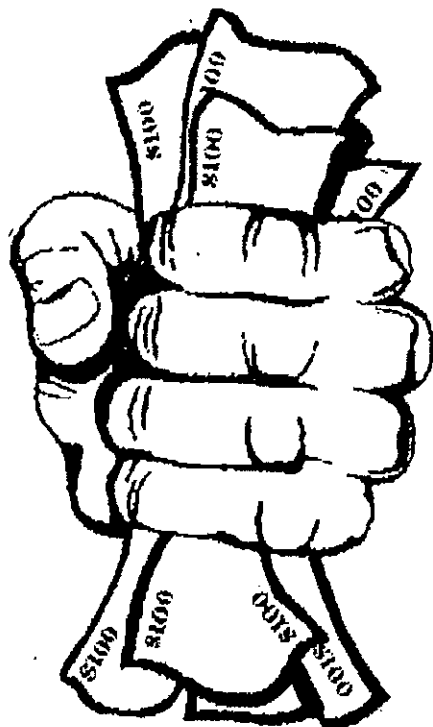
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 - Bankruptcy OK!
 - Foreclosure OK!
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CALL NOW!

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Mortgage Loan From New Century
Mortgage Corporation

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**"When the others say no,
New Century says YES!"**

Certain conditions and restrictions may apply. New Century Mortgage Corporation is a nationally recognized lender.

TO HAVE YOUR NUMBER REMOVED FROM OUR DATABASE, PLEASE CALL OUR AUTOMATED TOLL-FREE CENTER AT **800-443-7628**.

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